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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Freda E. Robinson

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AVON PRODUCTS, INC.

AVON PLACE

SUFFERN, NY 10901

EXAMINER

LANDAU, SHARMILA GOLLAMUDI

ART UNIT

PAPER NUMBER

1611

NOTIFICATION DATE

DELIVERY MODE

05/05/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENT.DEPARTMENT@AVON.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,737	<b>Applicant(s)</b> ROBINSON ET AL.	
	<b>Examiner</b> Sharmila Gollamudi Landau	<b>Art Unit</b> 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

Receipt of Request for Continued Examination and Amendments/Remarks filed 1/31/07 is acknowledged. Claims 1-24 are pending in this application. Claims 13-24 are directed to the elected invention and claims 1-12 are withdrawn as being directed to a non-elected invention.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 13-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Applicant claims are directed to a “non-emulsion” hair care composition which is vague and indefinite. An emulsion is defined as a mixture of two immiscible substances. In instant invention, the composition comprises a silicone elastomer in water. Further, since the silicone elastomer is water-insoluble, it is suspended in the water phase; hence providing an emulsion. Therefore, it is unclear what applicant is attempting to claim using the phrase “non-emulsion”. If applicant is attempting to exclude an oil phase using the term “non-emulsion”, the examiner points out that emulsions are not limited to an oil and water phase.

Further, the independent claims recite. "at least one surfactant...in an amount effective to provide its intended benefit". It is unclear what this "intended benefit" and thus the metes and bounds of the effective amount is vague and indefinite.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 13-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Independent claims 13 and 24 have been amended to recite "mixtures thereof", which does not have support in the specification as originally filed. Applicant points to page 8 for support; however support is not seen. Neither page 8 nor the examples support the contemplation of a mixture of the various esters.

Claim 15 is directed to the ester in an amount of about 0.1-10%, which does not have support in the specification as originally filed. The examiner notes page 9 of the instant specification in which applicant has support for the water compatible ester in an amount about 0.1 wt % to about 20 wt %, in an amount about 0.25 wt% to about 5 wt %, in an amount of about 0.25 to 2.5 wt %, and in an amount of about 0.25 to about 1 wt %. However, 10% has not been contemplated.

Claim 19 is directed to the silicone elastomer in an amount of about 0.01 to about 1%, which does not have support in the specification as originally filed. The examiner notes page 8 of the specification provides support for 1% but not for about 1% which includes values such as 0.9%.

Claim 19 is directed to a silicone elastomer in an amount of about 0.01 to about 1%, which does not have support in the specification as originally filed. The examiner notes page 8 of

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the specification provides support for 1% but not for about 1%, which includes values such as 0.9%.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergmann et al (6,432,393) in view of Jakobson et al (5,466,719) or Jakobson et al (5,247,114).**

Bergmann et al teach an aqueous hair composition in the form of shampoos, mousses, and conditioners which comprises elastomeric resinous material. See abstract. Bergmann teaches the elastomeric material preferably includes crosslinked silicone elastomers in an amount of 0.1-10%. See column 2, lines 45-60 and column 4, lines 45-20. The compositions further comprises a mixture of surfactants in the amount of 0.1-50% including cationic, anionic, amphoteric, nonionic, and zwitterionic. see column 5, line 30 to column 6, line 15. see examples.

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Bergmann does not teach the instant esters.

Jakobson teaches polyglycerol fatty acid mixtures with an HLB of over 8 and preferably 10. The fatty acid component includes lauric acid. see examples. Jakobson teaches the polyglycerol fatty acid ester mixture can be used as a skin-care additive and/or detergent, cleaning agent or body shampoo, shower gel or shower composition, foam bath composition, liquid hand-cleaning agent or hair shampoo, since in addition to the surface-active property it also has a mild cleaning action as well as an oil-restoring effect and gives a pleasant feel to the skin during and after the cleaning process. see column 10, lines 44-52. The polyglycerol fatty acid mixtures is used in the instant amount.

Jakobson teaches a polyglycerine fatty acid ester mixture. Jakobson teaches a cleansing agent comprising as a surfactant a fatty acid polyglycerol esters containing C8-C24 fatty acid component (note lauric acid is C12). The mixture is used in the claimed amount. see examples. The cleansing agent which contains a surfactant comprising a fatty acid polyglycerol ester mixture and is suitable for use as a detergent, cleaning agent or an agent for cleansing the body, including the hair, for example, a shower gel or shower composition, foam bath composition, liquid hand-cleaning agent or hair shampoo. In addition to exhibiting a milder cleaning action than known cleansing agents, a cleansing agent containing a surfactant comprising a fatty acid polyglycerol ester mixture within the present invention also possesses certain additional properties, such as, for example, a refatting effect and the capacity to impart a pleasant feel to the skin during and after the cleansing process, and an improved flow in the surfactant mixture for the skincare additive. A further advantage of a cleansing agent containing as a surfactant a fatty acid polyglycerol ester mixture is that it is dermatologically and toxicologically harmless. See

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column 7, lines 1-16. The surfactant is used in combination with other conventional surfactants. see examples.

It would have been obvious to one of ordinary skill in the art at the time the invention was made Bergmann et al and Jakobson et al ('719) and utilize the instant esters. One would have been motivated to add the esters to Bergmann's composition for the advantages taught by Jakobson including its mildness, oil-restoring effect to impart smoothness and softness.

Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Bergmann et al and Jakobson et al ('114) and utilize the instant esters. One would have been motivated to add the esters to Bergmann's composition for the advantages taught by Jakobson including its mildness, refatting effect to impart smoothness and softness, and dermatologically harmless. Regarding the HLB value, the examiner relies on Jakobson '719 as evidence to demonstrate that the polyglycerol fatty acid of Jakobson's '114 has an HLB above about 8.5.

Regarding the recitation "rinsing the hair to remove the composition", this is an implicit step when utilizing shampoos or conditioners (the prior art does not teach a leave-in-conditioner).

**Claims 13-16, 19-20, 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansher-Jackson et al (5,100,657) as evidenced by SISTERNA-SUCROSE ESTERS.**

Ansher-Jackson et al teach a clean conditioning composition for the hair. The method is taught on column 22, lines 28-50 and is rinsed after it is massaged into the hair. The composition comprises 0.1-10% of a conditioning system; 0.01-10% of a water-insoluble surfactant such as

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stearamide DEA, cocamide MEA, dimethyl stearamine oxide, glyceryl monooleate PEG-2 stearamine, Ceteth-2, glycerol stearate citrate, Poloxamer 181, hydrogenated tallow dimethyl betaine, hydrogenated tallow amide DEA, **sucrose stearate (HLB of 11)**; 65-98.8% of a solvent such as water; 0.1-18% of a silicon conditioning agent such as a silicone elastomer; and no more than 1% of a water-soluble surfactant which include anionic and nonionic surfactants. see claims and examples (especially claim 1 and 9). Silicone elastomers are taught on column 17, lines 60-65. Ansher-Jackson et al teach the silicone elastomer useful are the ones disclosed in US 4221688 which is incorporated by reference. US '688 discloses organopolysiloxane. The silicone elastomers and cationic surfactant conditioning agents may be used together. see column 18, lines 55-68. The cationic surfactant is used in an amount of 0.5-2% to provide static control benefits.

One cannot immediately envisage the instant water-insoluble surfactant (sucrose stearate) or silicone elastomer.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look to the guidance provided by Ansher-Jackson et al and utilize the instant ester. A skilled artisan would have been motivated to do so with reasonable expectation of success and similar results since the reference suggests the use of sucrose stearate as the water-insoluble surfactant. It should be noted that sucrose stearate inherently has a HLB of 11 as evidenced by SISTERNA. Further, it would have been obvious to utilize a silicone elastomer as the silicone conditioning agent in the invention since this is suggested by the reference.



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Regarding the recitation “rinsing the hair to remove the composition”, this is an implicit step when utilizing shampoos or conditioners (the prior art does not teach a leave-in-conditioner).

Note claim 17 is not rejected since applicant has elected triglycerol laurate as the ester of choice.

**Claims 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0855178 (of record) in view of Jakobson et al (5,466,719).**

EP ‘178 teaches a hair composition that is rinsed off (shampoo and hair conditioners) that comprises instant water-insoluble silicone elastomer powders. The composition imparts softness, smoothness, and keeps the hair oil-free. See abstract and page 1. The composition may comprise one or more surfactants including anionic, nonionic, ampholytic, and cationic in the amount of 5-30% with no restriction. See page 2, lines 20-35.

The reference does not teach the instant esters.

Jakobson teaches polyglycerol fatty acid mixtures with an HLB of over 8 and preferably 10. The fatty acid component includes lauric acid. see examples. Jakobson teaches the polyglycerol fatty acid ester mixture can be used as a skin-care additive and/or detergent, cleaning agent or body shampoo, shower gel or shower composition, foam bath composition, liquid hand-cleaning agent or hair shampoo, since in addition to the surface-active property it also has a mild cleaning action as well as an oil-restoring effect and gives a pleasant feel to the skin during and after the cleaning process. see column 10, lines 44-52. The polyglycerol fatty acid mixtures is used in the instant amount. The esters can be used with other conventional surfactants.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of EP '178 and Jakobson et al and further utilize the instant esters. One would have been motivated to add the esters to EP' composition for the advantages taught by Jakobson including its mildness, oil-restoring effect to impart smoothness and softness.

Regarding the recitation "rinsing the hair to remove the composition", this is an implicit step when utilizing shampoos or conditioners (the prior art does not teach a leave-in-conditioner).

### ***Conclusion***

**Claims 13-24 are rejected.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila Gollamudi Landau whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sharmila Gollamudi Landau/  
Primary Examiner, Art Unit 1611